

**PUBLIC HEARING MINUTES  
SECTION 10-MINIMUM WAGE LAW  
ILLINOIS DEPARTMENT OF LABOR  
160 North LaSalle, 13<sup>th</sup> Floor  
Chicago, IL  
MAY 23, 2014  
1:00 pm**

**Illinois Department of Labor (IDOL) Staff Attendance:** Valerie Puccini, Lilian Jimenez, Rosaelia Garcia and Jessie Casamajor

**Public in Attendance:** Yolanda Carrillo from Working Hands Legal Clinic, Lydia Colunga-Merchant from Working Hands Legal Clinic and Chris Williams from Workers Law Office.

**I. Call to order**

The Public Hearing was called to order at 1:15 pm by Valerie Puccini, Assistant General Counsel.

**II. Welcome- Introduction**

Valerie Puccini welcomed everyone to the Illinois Department of Labor to the Public Hearing on the Minimum Wage Law and asked IDOL staff in attendance to introduce themselves.

**III. Preliminary Comments:**

Valerie Puccini stated to everyone this is a Public Hearing under the Minimum Wage Law that the Illinois Department of Labor is required to hold. She commented that this public hearing is in addition to all of the other the regular rule making processes the Department goes through with the Secretary of State and the Joint Committee on the Administrative Rules. This is a preliminary stage and what we would like to do today is to get your view point, as to what is proposed so far. We will not be debating the issues and it will not be a frequently asked question session for various hypotheticals. The Department will not be formally addressing any of the comments but the Department will review your comments and some changes may be made to the rule. The proposed rule will be officially published in the Illinois Register and the Department will also put a notice on the IDOL website alerting the public when the rules are officially published for first notice. If you have already submitted written comments, we will review but those are the not the official written comments. When the rule is officially published in the Illinois Register, the public will have to present their written comments again, since the rule might look different from what you are seeing here today. There is a binder in the back of the conference room with a copy of the draft proposed rules, if you need to refer to the rules, please feel free to look at the binder. The time limit per presenter is 15 minutes so that everyone has enough time to present. If you have a cell phone, please put it on silent or vibrate. If you are a presenter please introduce yourself prior to your presentation.

#### IV. Presenter #1- Yolanda Carrillo, Working Hands Legal Clinic

Yolanda Carrillo from Working Hands Legal Clinic had a few comments and some general concerns. One general comment, The Illinois Minimum Wage Law ("IMWL") does incorporate the Federal Fair Labor Standards Act ("FLSA") in its language. She feels because the Illinois law largely tracks and in some instances expressly incorporates the federal FLSA, she proposes that several sections of the proposed rules track the federal regulations defining and interpreting the federal FLSA. She had a number of examples she would like to share, in addition she stated that the IMWL in part goes beyond the protection of the FLSA for Illinois workers and in those areas that protection needs to clearly remain.

The first concern she had was regarding the "exemptions for administration, executive and professional employees". They believe the IMWL language is limiting and it should reflect the federal regulations. One example is "executive employee". They have two concerns for the second prong, the language that was posed was "customarily and regularly directs the work of at least two or more employees". One of the concerns the federal FLSA regulation mention "other full-time" employees or at least "two other full-time" employees. It is very critical if it is left just "employees" that can be someone that works 10 hours or anything less than full-time.

The second concern is on the third prong on the Federal regulation was completely left off and that stated "must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight". Our concern not having a third prong is that any person that is a secretary or office administrator would be exempt even though they don't have authority to hire or fire but they are not doing any other work that would be considered executive.

The third concern is on the administrative employee definition on the federal FLSA which states "exercise discretion and independent judgment with respect to matters or significance". She stated many workers will be exempted even though they have no authority on matters of significance of running a business. They are just another employee with no authority and a lot more employees will be exempted then really should be.

The fourth concern is in "joint employer" relationships, the proposed regulations do not clearly define what constitutes a joint employment relationship under the statute. Currently, the regulation lists factors that tend to show an employment relationship, but these factors do not clearly tell adjudicators what makes two or more employers "joint employers." Again her suggestion is to follow the federal regulations which has three different factors that are considered: 1) where there is an arrangement between the employers to share the employee's services, or 2) where one employer is acting directly or indirectly in the interest of the other employer or employers in relation to the employee, or 3) where the employers are not completely disassociated with respect to the employment or a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The final major concern is the definition of “hours worked” is missing important language that protects those workers who, for example, work on a factory line and when the machinery breaks down and they are told to stay on site until the machine is fixed or for an indefinite period of time. Under the IMWL, these workers are arguably completely relieved from duty for a period of time sufficient to use the time effectively for their own purposes. It should be clarified, for instance, that being restricted to the premises while waiting to continue work limits these workers’ ability to use their time for their own purposes. She proposes “the employee is not completely relieved from duty and cannot use the time effectively for his or her own purposes unless he or she is clearly told in advance that he or she may leave the job and that he or she will not have to commence work until a specified time has arrived”. They believe that this language is very critical to not to leave out those workers.

She strongly proposes that several sections of the proposed rules track the federal regulations defining and interpreting the federal Fair Labor Standards Act (FLSA).

V. Presenter #2 – Lydia Conlunga- Merchant, Working Hands Legal Clinic

Lydia Conlunga-Merchant, staff attorney at Working Hands Legal Clinic. She has a small concern on the definition of “Salary”. The regulation section#4 discusses an employer can deduct from an employee’s salary and pay. She is concern specifically regarding section #4 which states “Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines”. As to when there can be a deduction as a good faith infraction, is not very clear. This particular regulation goes into safety rules and a serious danger in the workplace or to other employees’ and needs more clarity. For example, if the employer tells employee that he or she left the coffee pot on and the workplace might catch fire the employer could deduct from his or her pay. She is suggesting more clarity on this regulation, so that the worker is not penalized especially if it is going to be a regulation.

VI. Presenter #3 – Chris Williams, Workers Law Office

Chris Williams from Workers Law Office is concerned on the definition of “Tipped employee”. This definition states “an employee cannot be deemed a tipped employee unless he or she customarily and regularly” is in the occupation in which he or she engaged and receives \$30.00 or more per month in gratuities”. Chris Williams appreciates the department increasing the tip amount per month, but feels it should be even higher at \$50 to reflect the cost of living increase.

VII. Adjournment

Meeting adjourned at 1:32 pm.